Access to justice in India: exploring grassroots perspectives

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Redressing wrongful convictions: a comparative study of US innocence projects and the CCRC

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My SLSA small grant helped towards the six months I spent working at the Innocence Project New Orleans (IPNO). Innocence projects are non-profit organisations that work to free the wrongfully convicted from prison. IPNO was established because in Louisiana and Mississippi, the states with the highest incarceration and wrongful conviction rates in the USA, there is no public funding for post-conviction legal representation, other than for those sentenced to death; even a sentence of life without parole does not qualify. This study is intended to lead to a number of publications around the issue of wrongful convictions. This summary mentions just some of the most striking features.

America and England have been described as ‘two nations separated by a common language’. On the surface, the two criminal justice systems have much in common but, like being in a hall of mirrors, I found nothing was quite as it first appeared. It is easy to caricature but, in Louisiana, race, the poverty of and within the state, and a history of corruption in public office are all significant features in policing, prosecution and punishment. The system is very punitive: sentencing is draconian, prisoners may be manacled and the dying are rarely given parole lest they ‘recover and rob a bank’.

Prosecutors can be tenaciously partisan; in one case, the district attorney advanced a new, wholly fanciful, hypothesis as to how the appellant could be guilty after a DNA test - from a forensic scientist named after the sheriff - had disproved his original case. Sister Helen Prejean, the nun portrayed in the film Dead Man Walking, gave a compelling lecture detailing her campaign against the death penalty. This included letters to the Pope to object to the previous district attorney’s practice of sending priests to advise Catholic jurors that they could return a death sentence.

I was given a fascinating tour of Louisiana State Penitentiary. It used to be a plantation and it maintains the name, Angola, of the birthplace of most of the slaves who used to work there. Most prisoners still work in the fields. A prison infamously for its savagery has been transformed, the warden says mostly due to the conversion of half of the prisoners to Evangelical Christianity. I attended Long-Timers Day, an annual party for the large number who have served over 25 years, and the Angola Prison Rodeo, (which defies description but see wwww.angolarodeo.com).

Hearing the testimonies of the exonerates was humbling. Most have survived an unimaginably awful experience with almost no official assistance; currently they receive only $10 compensation. I followed the proceedings to pass a compensation bill through the state legislature but, following the hurricane, this is unlikely to be funded for many years. I also attended the inaugural meeting of the Texas Innocence Commission. (An increasing number of states are taking such a step in response to evidence of miscarriages of justice. In Illinois, this led the governor to commute the sentences of all those on death row.)

I had a fascinating opportunity to study the causes of and responses to wrongful convictions in two jurisdictions. Despite many apparent similarities, the two systems are separated by much more than a common language - although I learnt, with the greatest embarrassment when speaking about wrongful convictions in America and England, that the word ‘solicitor’ has very different connotations in New Orleans!

Contrary to expectations, participants appreciated the idea of measuring the concept of access to justice. They also understood scaling. In fact, whenever I cited examples of scaling, most groups completed the scales by judging themselves and somehow reflected them. This validates the view that non-technical laypersons can meaningfully contribute to the ‘technical task’ of measuring concepts.

The literature cites lack of data as one of the biggest hurdles in measuring access to justice in the developing world. However, most groups did not see the need for large samples or unambiguous sampling procedures and were happy to reach conclusions on the basis of judgment samples and small numbers of observations. This begs the question: is it justified to insist on a data-intensive approach to measure access to justice if the participants’ views are a guide, approaches that are less data-intensive may provide equally good information?

On the basis of these discussions, it is clear that people are less backward-

Indigenous rights, decentralisation and legal globalisation: Mexico and Guatemala

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My research project, generously supported by an SLSA small grant, analyses internationally promoted multicultural reforms of the state in Latin America, specifically recent reforms to justice systems which ostensibly at least, aim to make them more accessible to indigenous people. During the last two decades a number of states in the region, including Mexico, approved constitutional reforms to extend limited recognition to indigenous people. Mexico, Guatemala and other states also ratified International Labour Organization Convention 169 on the collective rights of indigenous and tribal peoples. These developments mean that issues of cultural difference are now firmly on the justice reform agenda. Governments and international donor agencies have promoted a series of projects and new judicial institutions which aim to decentralise certain aspects of justice administration and improve indigenous peoples’ access to justice. However, indigenous organisations often argue that at the same time that governments and donors commit funds to multicultural access to justice initiatives, indigenous peoples’ collective rights to autonomy and to prior consultation on wider development initiatives (as specified in ILO 169) continue to be denied in practice.

Between January and December 2005, I was based at the Centre for Research and Graduate Study in Social Anthropology (CIESAS) in Mexico City where I worked with Mexican researchers involved in a Latin America-wide activist-scholar research network on legal anthropology and indigenous peoples’ rights (RELAJU, the Latin American Network of Legal Anthropology). I travelled to Guatemala to research a series of initiatives within the state justice system aimed at strengthening indigenous access to justice. These include specialised public legal defence offices, community courts and various forms of alternative dispute resolution. I interviewed justice operators and project officials, together with indigenous rights activists who were engaged in grassroots initiatives to develop more culturally appropriate forms of dispute resolution and strengthen the legal autonomy of indigenous communities. In Mexico I collaborated with activists and researchers working with different
looking than is often presumed. For example, discussions on the issue of dowry deaths (usually the unnatural death of a newly-wed presumed to be linked to dowry demands) surfaced in all three states in which focus groups were conducted. In that context it was pointed out that families of the husband and the deceased wife settle the matter through informal means resulting in the collapse of prosecutions. Many groups also revealed that at times people approach police or other agencies to request that an erring party be admonished and restrained rather than going to court or filing complaints. This line of inquiry might question the usefulness of case filing and conviction statistics as a valid measure of access to justice in that society.

As an alternative, almost all groups – from homeless migrant labourers to middle-class professionals and traders – suggested that the attitude and behaviour of police could be a good indicator. People’s behaviour towards each other, especially those of different social status, was also a favourite. Analysis of conversations at roadside kiosks, tea stalls etc was also suggested (of course this assumes a culture of discussion and freedom of speech).

The study spanned three states, Delhi, Jharkhand and Karnataka. The states provide regional variation, within the limitation of conducting discussions in either Hindi or English. They cover socially and economically backward as well as developed areas; north and south India; places with net (internal) immigrant inflow as well as outflow. The states covered are also the subject of a UN Development Programme study on access to justice focused on analysis of court records and views of court users. I hope this will enable data triangulation once the UN study is published.

Focus groups numbered from 4 to 14. Participants were homogeneous, ie people with the same/similar socio-economic status. Most sampling was by convenience. Participants were not directly known to me, but were recommended by my contacts (and theirs) at the respective places. In each state six focus-group discussions were conducted: three involving lay participants and three with field-level government officials including the police, the judiciary and the general administration. The discussions were conducted with the help of a pre-approved topic guide. The topic guide used a classic funnel design, with the participants being posed general open-ended questions at the beginning and tighter and sometimes leading questions towards the end. Participants were given no prior briefing on the subject. The discussions were moderated either by one of my local research assistants or myself and moderator involvement varied during the discussions. Usually the moderator was more active towards the end of the discussion. All but two groups allowed me to audio-record the proceedings. The participants represented a wide socio-economic and demographic profile, with the exception of young persons and the moneyed elite. The venue for the first focus groups was a sound recording studio. Thereafter most of the discussions involving government officials took place in their office chambers/meeting rooms and three of the laypersons’ groups were conducted in NGO offices. The rest of the groups were either conducted at the addresses of one of the participants or in hotel rooms.

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